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The Pennsylvania Legislature Takes a Significant, though Insufficient, Step toward Addressing Blight and Tax Delinquency: House Bill 712, the Land Bank Act

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I. INTRODUCTION

The Pennsylvania House of Representatives recently passed a bill authorizing the creation of land banks for the purpose of addressing vacant and tax-delinquent properties in Pennsylvania municipalities.¹ The bill, known as the Land Bank Act, is currently in the state Senate for consideration and will likely be voted upon soon. The Land Bank Act is an important, though insufficient, step toward addressing the problem of blight and abandonment of properties throughout Pennsylvania. The problem of blight is especially acute in the Commonwealth's two largest cities, Pittsburgh and Philadelphia. This comment will compare and contrast the contents of the bill against a competing version that stalled in the Pennsylvania Senate in early 2010.² This juxtaposition will take place in the context of a more general discussion of how land banks operate to address blight and tax delinquency. In particular, the comment will analyze how the Land Bank Act should affect the City of Pittsburgh's efforts to address its blight. Lastly, this comment will seek to show how even once the bill

1. Land Bank Act, H.B. 712, Gen. Assemb., 2009 Sess. (Pa. 2009).

2. Land Banks Authorities Act, S.B. 1187, Gen. Assemb., 2010 Sess. (Pa. 2010). This bill is in large part similar to H.B. 712, but its differences are instructive in demonstrating the necessary conceptual flexibility of land banks.

passes the Senate (assuming it does), the legislature will still need to revamp the Commonwealth's tax foreclosure laws.³

The population of the City of Pittsburgh ("the City") has steadily declined over the last fifty or so years, leaving the City awash in empty buildings.⁴ The amount of abandoned properties in Pittsburgh is staggering. According to the 2000 Census, there were 18,742 vacant properties in the City at the time, which was 11.5% of all housing units.⁵ Though the City's Bureau of Building Inspection demolishes as many blighted properties as it is able, it can only make a small dent in the issue, given the City's limited funds.⁶

Current municipal strategies for addressing the problem, such as tax foreclosure or demolition, may slightly mitigate the issue, but these strategies have proven unable to seriously reduce the specter of blight haunting the poorest neighborhoods in the City. In addition to these municipal strategies, the City has worked with local community development corporations ("CDCs") through the City's Land Reserve.

In 1998 the City Council authorized the City's Department of Finance to create a property reserve for tax lien properties singled out by CDCs.⁷ CDCs are given a chance to exclude tax-delinquent properties from any pending sale of tax liens by the City to an external purchaser, so that the CDCs can redevelop the properties, thereby returning them to the tax rolls.⁸ The City then acquires the excluded properties in a treasurer's sale within one year of the

3. See Municipal Claims and Tax Liens Act of 1923, 53 PA. CONS. STAT. §§ 7101-7505 (2004); Real Estate Tax Sale Law of 1947, 72 PA. CONS. STAT. §§ 5860.101-5860.803 (1990); Second Class City Treasurer's Sale and Collection Act of 1984, 53 PA. CONS. STAT. §§ 27101-27605 (1998).

4. POPULATION OF THE 100 LARGEST CITIES AND OTHER URBAN PLACES IN THE UNITED STATES: 1790-1990, <http://www.census.gov/population/www/documentation/twps0027/twps0027.html> (last visited Jan. 18, 2011). The population of the City of Pittsburgh, according to census data, peaked at 676,806 in 1950, declined to 334,563 in 2000, and is estimated to have declined further to 311,647 in 2009. *Id.*; <http://www.city.pittsburgh.pa.us/cp/assets/census/PittsburghWebComparison.pdf> (last visited Jan. 18, 2011); CENSUS RESULTS BY CITY, <http://www.census.gov/popest/cities/tables/SUB-EST2009-01.csv> (last visited Jan. 5, 2011).

5. Housing Alliance of Pennsylvania, *Reclaiming Abandoned Pennsylvania II: From Liability to Viability, a Technical Resource Guide for Action* 9 (2005), <http://housingalliancepa.org/var/resourcefile/file/55-From%20Liability%20to%20Viability%20full%20report.pdf>.

6. See Adam Fleming, *Breaking Up a Home*, PITTSBURGH CITY PAPER (Mar. 27, 2008), <http://www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A44016>.

7. See Pittsburgh, Pa., Resolution 402 (June 25, 1998).

8. *Id.* at 2.

CDCs' exclusion.⁹ The properties are then placed in the property reserve for a period of up to two years, while the CDCs' redevelopment and financing plans are scrutinized and approved by the City's Urban Redevelopment Authority.¹⁰ Once approved, the CDCs are able to acquire the properties for one thousand dollars, plus the City's costs in clearing title and maintaining the property.¹¹

The City's Land Reserve has been a positive step toward addressing the rampant blight in the poorer neighborhoods of Pittsburgh. Because of it, hundreds of properties have been cycled through the process from being tax-delinquent and abandoned to becoming tax-producing and inhabited.¹² However laudable the Land Reserve's effects have been, they are ultimately insufficient. For starters, the Land Reserve is only capable of holding three hundred properties at a time.¹³ Second, only competent CDCs with approved redevelopment plans can acquire the properties.¹⁴ Third, the amount of time it takes for the properties to be acquired by the City, have their titles cleared, and for the plans of CDCs to be approved, can be upwards of two or three years. In a city with thousands of abandoned and tax-delinquent properties, recycling three hundred properties at a time, even if all are recycled within one or two years, will barely scratch the surface in eliminating blight.

Demolition, tax foreclosure, and even the progressive step of the Land Reserve are incapable of tackling blight on their own. The Pennsylvania legislature has recognized this problem with its anticipated passage of the Land Bank Act. Before assessing the Act's ability to tackle blight, this comment will now give a general overview of how land banks function.

II. GENERAL OVERVIEW OF HOW LAND BANKS FUNCTION

Put simply, a "land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and tax-delinquent prop-

9. *Id.*

10. *Id.* at 3.

11. *Id.* at 2.

12. As of 2006, 173 properties had been recycled through the Land Reserve. *See, Vacant Property Working Group 2006 Year in Review*, PITTSBURGH CMTY. REINVESTMENT GROUP. (2006), available at http://www.pcrp.org/wp-content/uploads/2008/07/2006-year_in_review.pdf.

13. Resolution 402, *supra* note 7, at 3.

14. *Id.* at 3.

erties into productive use.”¹⁵ This broad definition leaves plenty of room for variation and fine-tuning on the part of actual land banks. For instance, the legal forms of land banks can differ widely, depending upon the governmental structure in a given state or city.¹⁶ Similarly, a given municipality’s land bank’s purpose and policies will often be tailored to that municipality’s specific needs.¹⁷ Even the types of properties that land banks focus on vary. Though land banks generally focus on abandoned and vacant properties, not all abandoned or vacant properties are alike—tenants may even occupy some, while others may be being held for long-term investment.¹⁸ While the causes of abandonment and vacancy are legion, varying from locale to locale, “[p]roperty tax delinquency is the most significant common denominator among vacant and abandoned properties.”¹⁹ But even tax delinquency can stem from numerous causes, such as inadvertent neglect, or more egregious causes, like an owner’s deliberate failure to pay taxes in an effort to sap as much equity from a property as possible.²⁰

Land banks can be created by state statute,²¹ by intergovernmental agreement, or as part of an existing governmental agency.²² Land banks may have their own staff, or other governmental employees may rotate in overseeing a land bank’s affairs.²³ Lastly, some land banks function to demolish, maintain, or even rent the properties they acquire, while others only acquire properties that they can immediately convey to other parties for redevelopment.²⁴

Though land banks are not strictly uniform in their makeup and methods, they do share some common functions in addressing abandonment. Importantly, legislation enabling the creation of land banks is often (necessarily, in some cases) paired with reform of state property tax foreclosure procedures.²⁵ Whether the tax foreclosure laws are revamped or not, the “core legal authority

15. FRANK S. ALEXANDER, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 2 (Local Initiatives Support Corporation ed., 2005).

16. *Id.* at 5.

17. *Id.*

18. *Id.*

19. *Id.* at 4.

20. ALEXANDER, *supra* note 15, at 4.

21. See, e.g., KY. REV. STAT. ANN. §§ 65.350-65.375 (West 2010).

22. ALEXANDER, *supra* note 15, at 8.

23. ALEXANDER, *supra* note 15, at 8.

24. ALEXANDER, *supra* note 15, at 8.

25. ALEXANDER, *supra* note 15, at 8.

essential for land bank operations is the power to acquire, manage, and dispose of property.”²⁶

As might be expected, however, land banks acquire properties in various ways. For instance, the St. Louis Land Reutilization Authority is deemed to have made the statutory minimum bid for all properties that are not otherwise sold at a tax sale.²⁷ Similarly, the Cleveland Land Bank receives properties not purchased for the minimum bid, but may also single out properties that it wants before they even go to auction.²⁸ On the other hand, the City of Atlanta Land Bank Authority may, but need not, tender the minimum bid at tax foreclosure sales.²⁹ In addition to acquiring properties from tax sales, land banks may also acquire properties directly from local governments, from private donations, or by purchase in the open market.³⁰

Management of land bank properties usually requires inventorying and classifying at the least, and at most can include any activity that a private property owner would undertake.³¹ Land banks may be authorized to rent, repair, demolish, or lease the properties in their control.³² Disposition of properties may be limited by state and local laws regarding governmental transfers, such as requirements that properties conveyed to private parties be sold for fair market value.³³

Land banks are not appropriate for every locale. In reality, they are only necessary, or even helpful, where at least five to ten percent of a community’s properties are abandoned, vacant, or tax-delinquent.³⁴ When a location’s conventional real estate market is insufficient for ensuring that properties remain viable, or when the local government is not able to foreclose upon and re-convey properties in an efficient manner, then a land bank may be an appropriate tool.³⁵ For the City of Pittsburgh, given its population decline and glut of abandoned properties, the former condition is undoubtedly present, and so perhaps the tool of a land bank would be in the City’s best interest. Of course, whether the tool is ap-

26. ALEXANDER, *supra* note 15, at 22.

27. MO. REV. ST. § 92.830 (1998).

28. OHIO REV. CODE ANN. § 5722.04 (West 2010).

29. ALEXANDER, *supra* note 15, at 23.

30. ALEXANDER, *supra* note 15, at 23-24.

31. ALEXANDER, *supra* note 15, at 24.

32. ALEXANDER, *supra* note 15, at 24.

33. ALEXANDER, *supra* note 15, at 25.

34. ALEXANDER, *supra* note 15, at 10.

35. ALEXANDER, *supra* note 15, at 12.

propriate depends upon how it is crafted; therefore, attention to Pennsylvania's enabling legislation for land banks is now warranted.

III. PENNSYLVANIA'S INCIPIENT LAND BANK ACT

The Pennsylvania Land Bank Act³⁶ ("the Act") begins by noting the inability of local communities—urban, suburban, and rural—to deal with the threat of abandoned and tax-delinquent properties.³⁷ In addition to reducing nearby property values, such properties increase fire and police protection costs,³⁸ inhibit community cohesion,³⁹ and provide hotbeds for criminal activity.⁴⁰ The State's Senate version made explicit the fact that land banks provide for acquisition, management and transfer of tax-delinquent properties to local government agencies, CDCs, private developers and adjacent property owners in order to turn community liabilities into assets.⁴¹ The State's House version leaves implicit the parties to whom a land bank may transfer its properties and it notes the import of land banks with a pithy phrase: "turning vacant spaces into vibrant places."⁴²

The Act is enabling legislation: it provides that land bank jurisdictions (i.e. cities and counties) with authority to create redevelopment authorities *may* pass ordinances to create land banks.⁴³ The legislation provides broad powers for land banks. Land banks are "a public body, corporate and politic, exercising public powers of the Commonwealth, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions" of the Act.⁴⁴ This includes the power to sue and be sued, to adopt a seal, to borrow money, to issue bonds, to procure insurance, to maintain properties, and the like.⁴⁵

36. References to "the Act" denote the House version. The Senate version, which stalled shortly after introduction, will be specifically referred to when it is under consideration.

37. H.B. 712 at 1.

38. *Id.* at 2.

39. S.B. 1187 at 1-2.

40. William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. CRIM. JUST. 481 (1993).

41. S.B. 1187 at 2.

42. H.B. 712 at 2.

43. *Id.* at 3. Also, school districts may participate in a land bank through an intergovernmental cooperation agreement. *Id.* at 5.

44. *Id.* at 8.

45. *Id.* Notably, land banks are denied the power of eminent domain. H.B. 712 at 10-11.

Each land bank must have an odd-numbered board of directors of at least five members who receive no compensation for their services and who must meet regularly.⁴⁶ The Act gives municipalities the option of funding a separate staff for the land bank, or using current employees to undertake the land bank's efforts.⁴⁷

The Senate version of the Act required land banks to "maintain a list of city, county or regional housing authorities, redevelopment authorities and community development corporations that have requested to be notified prior to any action by the authority to dispose of property in its inventory."⁴⁸ The House version drops this requirement, presumably under the impression that such communications would become burdensome if a land bank's inventory was substantial.

Acquisition of property by the land bank differs between the House and Senate versions of the Act. While the House version continues to use permissive "may" language in allowing land banks to acquire property in various ways, it does not designate any situations where a land bank must acquire property.⁴⁹ On the other hand, the Senate version required that if property is placed in a tax sale where no person bids the minimum amount, then the land bank is deemed to have made the minimum bid, even if all the parties to the establishing agreement are not parties to the lawsuit.⁵⁰ The Senate version went on to specify that a land bank deemed to have made the minimum bid will not have to make actual payment to the court, but rather the court shall treat the bid amount as cash received.⁵¹ The bill then authorized courts, upon motions by land banks, to make a deed of the property to the land banks, free and clear of all liens and encumbrances.⁵² A land bank would then hold title to the properties in its own name.⁵³ The House version also specifies that land banks will hold title in their own names⁵⁴ but does not require acquisition of any particular property, thus leaving land banks free to determine their invento-

46. *Id.* at 3, 5-6.

47. H.B. 712 at 8.

48. S.B. 1187.

49. H.B. 712 at 11.

50. *Id.* at 6. The Senate version defined the minimum amount as "an amount equal to the full amount of all tax bills, interest and costs owing on the property." S.B. 1187 at 6.

51. H.B. 712 at 6.

52. *Id.* In order for this mechanism to be constitutional proper notification must be given to all parties with legally protected interests in the property prior to sale. See discussion *infra* Part IV.

53. *Id.*

54. *Id.* at 12.

ry. The Act further notes that a land bank may not take title to properties outside of the jurisdictions of the parties that created the land bank.⁵⁵

Once the land bank takes title to properties, all real estate taxes cease to accrue on the properties so long as the land bank owns them.⁵⁶ The maintenance and administration of the properties is further delineated in the Act. The Act requires land banks to inventory their property and to make such information available to the public.⁵⁷ The Senate version also required that the inventory must be appraised, organized, and classified based on suitability for use, but the House version drops this costly requirement.⁵⁸ The Act requires land banks to maintain their properties in conformity with all applicable codes and regulations.⁵⁹ Once a land bank takes title to properties it may maintain them as any property owner would—leasing, renting, repairing, insuring⁶⁰—subject in some cases to the determinations of the land bank's board of directors.⁶¹

Under the Act, land banks may dispose of properties without being subject to the disposition requirements usually applicable to the local governments, school districts, and tax bureaus that establish the land banks.⁶² While the House version simply requires that a land bank determine the consideration necessary to convey a given property,⁶³ the Senate version specifically required that a land bank determine a price for rent, lease, or sale and that the land bank must publish such information on the Internet at least thirty days before the property may be sold or otherwise conveyed.⁶⁴ Undoubtedly, this provision was meant to protect against land banks becoming a means of abuse whereby developers and other government insiders get foreclosed properties through backroom deals. However, it should be noted that under the Senate version property could have still been conveyed by a land bank for less than fair market value or even for no consideration.⁶⁵ But

55. *Id.*

56. H.B. at 11. This exemption ceases for properties that have been continually leased for five years by the land bank to a third party. *Id.*

57. *Id.* at 13.

58. S.B. 1187 at 7.

59. H.B. 712 at 11.

60. *Id.* at 10, 13.

61. *Id.* at 14.

62. *Id.* at 13.

63. *Id.* at 12.

64. S.B. 1187 at 7-8.

65. *Id.* at 9.

at least such deals would be in the view of the public, hopefully curbing abuse. The House version does not list specific steps that a land bank must take but simply requires it to be subject to Pennsylvania's open meetings law and its Right to Know Law.⁶⁶

One safeguard against perpetuating blight that the Senate version included, and that the House version adopts in different language, is allowing land banks to require purchasers to rehabilitate given properties within a specified period of time after conveyance.⁶⁷ Such a provision can protect against speculators acquiring properties solely for passive investment. Having acquired clear title from the land bank such investors may sit on the property, waiting for property values to rise, while adjacent property owners have to continue to deal with the abandoned property, which may or may not be in disrepair. Whereas the Senate version required some kind of board approval for disposition, the House version uses "may" language, thereby allowing the officers or staff of the land bank to proceed without explicit board approval.⁶⁸

The scheme for distribution of proceeds from sale of land bank properties differs significantly between the House and Senate versions. The Senate version required that the taxing bodies establishing a land bank be reimbursed their costs in bringing the action that resulted in the acquisition of the property.⁶⁹ The House version allows municipalities to determine what consideration or conditions it will require for a land bank to acquire a property or interest in property.⁷⁰ Once such costs are reimbursed to the establishing parties, the Senate version required that leftover proceeds be divided in proportion to the respective tax bills of each party, as the bills existed just prior to acquisition by the land bank.⁷¹ In some cases, such as where the tax bills have approached the fair market value of a property (not an uncommon occurrence)⁷², such a scheme would deny funding to the operations of the land bank. In contrast, the House version provides a creative funding scheme for land banks. Once a land bank conveys a

66. H.B. 712 at 17-18.

67. S.B. 1187 at 8; H.B. 712 at 13. The House version permits consideration for disposition to take the form of covenants and conditions relating to the use of the property and contractual obligations of the transferee. H.B. 712 at 13.

68. S.B. 1187 at 8; H.B. 712 at 14.

69. S.B. 1187 at 8-9.

70. H.B. 712 at 11-12. However, under the Senate version, "[n]o property may be sold . . . or otherwise disposed of, unless the transaction is approved by the board member" S.B. 1187 at 8.

71. S.B. 1187 at 9.

72. See ALEXANDER, *supra* note 15, at 16.

property, the establishing parties may dedicate a portion of the subsequent tax revenue from that property to the operations of the land bank.⁷³ The establishing parties may dedicate up to fifty percent of the tax revenue for a period of up to five years.⁷⁴ Further funding of land bank operations can come from grants, loans, and land banks being authorized to issue tax-exempt bonds.⁷⁵

As indicated earlier, the operations of a land bank are inextricably linked to the tax foreclosure process.⁷⁶ Unfortunately, Pennsylvania's tax foreclosure laws are rather labyrinthine, as reflected by the fact that there are at least three laws governing tax sales, which are briefly addressed in the House version.⁷⁷ Though the tax laws themselves may be questionable or at least problematic for land bank operations, the Act gives municipalities and their land banks important powers. Municipalities may assign and transfer to the land bank any of their tax liens or claims and the corresponding rights and remedies.⁷⁸ When a land bank is the purchaser of a property at a judicial sale payment may be made at a later time, as opposed to immediately, which is the requirement for private parties.⁷⁹ A land bank which holds multiple tax liens may combine in a single suit the multiple tracts to which those liens are attached, so long as the land bank identifies each tract, identifies all parties that have an interest in each tract, identifies the amount of the liens due, and identifies that notice has been provided to the interested parties.⁸⁰ The Act also abrogates the three month right of redemption period for property owners under the Municipality Claims and Tax Liens Act.⁸¹

The changes the Act makes to some of the tax foreclosure schemes are necessary but not sufficient. Simply, in order for land

73. H.B. 712 at 15.

74. *Id.* The House version provides the caveat that school district taxes may only be remitted upon specific agreement between the land bank and the school district. *Id.* It would seem this provision guards against one government operation—land bank expenditures—from draining the funds of an equally, if not more, important government function—education.

75. H.B. 712 at 15-16.

76. *See supra* Part II.

77. *See* Municipal Claims and Tax Liens Act of 1923, 53 PA. CONS. STAT. § 7101 *et seq.* (2004); Real Estate Tax Sale Law of 1947, 72 PA. CONS. STAT. § 5860.101 *et seq.* (1990); Second Class City Treasurer's Sale and Collection Act of 1984, 53 PA. CONS. STAT. § 27101 *et seq.* (1998). There are also similar provisions for Second Class A Cities. *See* 53 PA. CONS. STAT. § 30901-30915 (1998). The House version discusses these statutes in turn. H.B. 712 at 21-29.

78. H.B. 712 at 21-22.

79. *Id.* at 22.

80. *Id.* at 23.

81. *Id.* at 26 (discussing 53 PA. CONS. STAT. § 7193.3 (2004)).

banks to work more efficiently than the current regime, they must be able to foreclose on abandoned and tax-delinquent properties more quickly, in a more streamlined process, without sacrificing any requirements of due process. Currently, tax sales are almost a non-threat because property owners (including moderately sophisticated slumlords) have at minimum two years leeway before they actually lose their property. This is ample time to milk nearly all of the equity from lower cost properties, which are usually in poorer neighborhoods already struck by blight. As an example, the Luzerne County Tax Bureau succinctly explains the process under the Real Estate Tax Sale Law:

Real Estate tax notices are mailed out by each municipality's tax collector. If the taxes are not paid by December 31st (of the year the taxes became due and payable), each local tax collector returns all delinquents and uncollectables to the Bureau for further collection. The Bureau sends out a "Notice of Claim" to notify each property owner with delinquent taxes that a claim has been entered against the property. These notices are generally mailed in the spring of the year after the tax was due. The tax claim becomes "absolute" if it is not paid by December 31st of the year it was turned over to the Bureau. The property owner then receives notice that the property will be advertised, posted, and sold. If the tax due is not paid by July 1st (of the 2nd year after the original tax bill was issued by the local tax collector), the property is advertised for sale. Under the Pennsylvania Real Estate Tax Sale Act ("Act") the upset sale is held. If the properties are not sold at the upset sale, they are then listed to be sold at a judicial sale.⁸²

Pursuant to this Real Estate Tax Sale Law, a property owner has over two years from the time he stops paying property taxes until an upset sale occurs.⁸³ Then he has additional time until a final judicial sale occurs. Even if a municipality assigns the tax liens to its land bank, the land bank will still have to go through a lengthy process involving two sales. What is worse, tax sale procedures do not always provide insurable title, making the proper-

82. Luzerne County Tax Claim Bureau, *Procedures for Collecting Taxes*, June 18, 2010, http://www.luzernecounty.org/county/departments_agencies/tax_claim_bureau.

83. Of course, there are good reasons to give property owners some length of time. Given the drastic remedy of foreclosure, property owners should be given at least one year to pay delinquent taxes. But if they do not pay after one year, it seems unlikely that they will ever pay.

ties acquired thereby unmarketable.⁸⁴ Such deficiencies in the tax foreclosure process will weaken the efforts of land banks.

The Land Bank Act is certainly an important step. Overall, it provides a good base for cities and counties to create land banks. Its provisions leave room for adjustment so that the land banks that are created are able to meet the specific needs of the authorities creating them. However, once the Act passes the state Senate and becomes law, more work will be required; namely, a reform of Pennsylvania's tax sale laws.⁸⁵ The next section will address the requirements of due process and suggest procedural changes to the tax sale laws that will enable land banks to work as efficiently as possible in combating the blight plaguing Pennsylvania's towns and cities.

IV. CONSTITUTIONAL REQUIREMENTS IN TAX SALES

In *Mullane v. Central Hanover Bank & Trust Co.*⁸⁶ the Supreme Court confronted the question of what kind of notice is required in a tax sale under the Due Process clause. The context was a New York law that placed smaller trusts into the hands of one trustee in order to make administration of the trusts more efficient.⁸⁷ The Court noted that "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."⁸⁸ Though the Court eschewed any immutable "formula" for what due process requires, it did lay out an important, albeit mutable, formulation.⁸⁹ The Court maintained that an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."⁹⁰ Ultimately, the Court held that publication of the trusts'

84. See ALEXANDER, *supra* note 15, at 19.

85. This does not reflect any shortcoming in the Land Bank Act. Pennsylvania's Constitution requires that each bill only address one topic. See PA. CONST. art. III, § 3 ("No bill shall be passed containing more than one subject, which shall be clearly expressed in its title.").

86. 339 U.S. 306 (1950).

87. *Mullane*, 339 U.S. at 307-08.

88. *Id.* at 313.

89. *Id.* at 314.

90. *Id.*

information in the newspaper was sufficient notice to beneficiaries whose whereabouts could not be found with due diligence, but was insufficient as to beneficiaries who had a known place of residence.⁹¹

The Supreme Court extended this holding to tax sales thirty-three years later in *Mennonite Board of Missions v. Adams*.⁹² In *Mennonite*, the question before the Court was whether publication and a posting at a county courthouse of property tax-delinquency and a pending proceeding to sell the subject gave sufficient notice to a mortgagee of real property to satisfy due process.⁹³ Indiana's tax sale statute required county auditors to publish notice of a sale once a week for three weeks and entitled property owners to notice by certified mail, but did not require that mortgagees be notified.⁹⁴ After notice is given, a treasurer's sale is held where the highest bidder acquires a certificate of sale that serves as a first priority lien against the property.⁹⁵ There is then a two-year redemption period where the owner or any person with an interest in the property may redeem for the amount paid by the winner at the treasurer's sale, plus taxes and other costs paid by the winner following the sale.⁹⁶ If no redemption occurs, the winner applies for a deed and then may bring a suit to quiet title.⁹⁷ In *Mennonite*, the property owner failed to pay her taxes and was given notice of the tax sale, but she failed to redeem.⁹⁸ And since the owner continued to make her mortgage payments after the tax sale, the appellant, the mortgagee, had no knowledge of the tax sale until after the redemption period had run.⁹⁹ When the winner of the property, the appellee, filed suit to quiet title, the appellant contended that it did not receive constitutionally adequate notice.¹⁰⁰ The Indiana courts upheld the sale and the law, but the Supreme Court reversed.¹⁰¹

The Supreme Court began its analysis by citing the formulation of due process in *Mullane*.¹⁰² The Court noted that since a mort-

91. *Id.* at 317-18.

92. 462 U.S. 791 (1983).

93. *Mennonite*, 462 U.S. at 792.

94. *Id.* at 793.

95. *Id.*

96. *Id.*

97. *Id.* at 794.

98. *Mennonite*, 462 U.S. at 794.

99. *Id.*

100. *Id.* at 795.

101. *Id.*

102. *Id.* (citing *Mullane*, 339 U.S. at 314).

gagee certainly has a legally protected property interest, he is entitled to "notice reasonably calculated to apprise him of a pending tax sale."¹⁰³ When the mortgagee's identity and/or address are ascertainable, "constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service."¹⁰⁴ Only if the mortgagee, or others with legally protected interests in the property, "is not reasonably identifiable," is constructive notice warranted.¹⁰⁵ The Court concluded that "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable."¹⁰⁶

Therefore, any tax sale law the Pennsylvania legislature may adopt must conform at the least to this constitutional standard. The Court's rule is what one might call "open textured": a party with a legally protected interest whose name and address are reasonably ascertainable based upon reasonably diligent efforts is entitled to notice reasonably calculated to inform it of the tax sale proceeding.¹⁰⁷ This open textured rule leaves room for interpretation in the creation of new tax sale laws, which can be either a blessing or a curse. While the rule does not require any one tax scheme—thus leaving legislators free to adapt as necessary—it is also unclear what will be determined "reasonable" by courts—thus leaving legislators unsure of which adaptations will be sufficient.

Next this comment will conclude by considering some features of a tax foreclosure scheme that are necessary to enable land banks to work as efficiently as possible in reaching the goal of eliminating blight in the communities of Pennsylvania.

V. TAX SALES

Professor Frank Alexander notes four subsidiary questions that *Mennonite's* rule leaves unanswered:

103. *Mennonite*, 462 U.S. at 798.

104. *Id.*

105. *Id.*

106. *Id.* at 800.

107. Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 749 (2000).

(1) What events, or stages, in a property tax enforcement proceeding give rise to the requirement of adequate notice? (2) What property interests are entitled to more than notice by publication? (3) How is the existence of the interests to be ascertained? (4) What efforts are required in order to identify accurate addresses of the interested parties?¹⁰⁸

These questions have received inconsistent treatment in the lower courts. For question two, often courts do not give judgment creditors the same protection as mortgagees, while lessees and occupants of property, owners of easements, and other parties may or may not be entitled to notice.¹⁰⁹ As to the third question, *Menonite* seems to imply that taxing authorities must conduct a title search to determine all the parties with legally protected interests in the property.¹¹⁰

In many jurisdictions, including Pennsylvania, more than one sale occurs in tax enforcement.¹¹¹ First, there may be an upset sale where a purchaser acquires a first priority lien on the property in return for paying the amount of taxes and fees due and then a judicial sale where a deed free and clear of all liens and encumbrances is issued.¹¹² In such jurisdictions the answer to question one is crucial: need the same kind of notice and/or title search be conducted prior to both sales or only prior to the first sale?¹¹³

Given the complexity and ambiguity of the law surrounding tax sales, the scheme for enforcing tax delinquency should be as streamlined and clear as possible. One major reason why such clarity is necessary is that often properties sold at tax sales are not able to receive title insurance.¹¹⁴ Insurance companies are unwilling to insure properties when the very laws under which those properties were acquired, the tax sale laws, are constitutionally in question.¹¹⁵

Though a full review of Pennsylvania's tax sale laws is beyond the scope of this comment, a few features and suggestions for reform are possible. Two important goals of such reform present themselves: (1) properties acquired through tax sale, by land

108. *Tax Liens*, *supra* note 107, at 749-50.

109. *Tax Liens*, *supra* note 107, at 750.

110. *Id.* at 751.

111. Real Estate Tax Sale Law, 72 PA. CONS. STAT. § 5860.601-.612-2 (1990).

112. *Id.*

113. *Tax Liens*, *supra* note 107, at 768.

114. *Tax Liens*, *supra* note 107, at 748.

115. *Tax Liens*, *supra* note 107, at 748.

banks or private parties, must be able to acquire title insurance, and (2) the system must be speedy enough to allow land banks to acquire abandoned and tax-delinquent properties at a pace that can actually reduce or eliminate blight, but it must also be slow enough to give property owners a fair amount of time to pay their taxes before the drastic remedy of tax foreclosure occurs.

In order to reach the first goal, constitutionally adequate notice must be given to all parties with legally protected interests in the subject property. At a minimum, this will require the tax bureau of each county to conduct a title examination to identify such parties. Once identified the tax bureau must take reasonably diligent steps to notify each party at its last known address through certified mail. In fact, some courts have even held that if mail is returned, the taxing authority must make other efforts to locate the correct address.¹¹⁶ In addition to a title examination, the taxing authority may have to search other land records, for non-secured creditors and lessees.¹¹⁷ Lastly, notice should be posted at the property in order to notify any occupants who may not be ascertainable through public records.

Because of the extensive up-front work that taxing authorities will have to do to satisfy the constitutional standard of due process, it seems necessary that only one proceeding should occur for a property to be foreclosed upon. Otherwise, the taxing authority may have to go through the entire notice process again, assuming that the constitutional standard requires notice for each new proceeding.¹¹⁸ Moving from two proceedings to one is not only necessary to reasonably adhere to the due process standard, but also to render the entire process more speedy so that land banks can acquire abandoned and tax-delinquent properties at a rate necessary to be effective. Rather than it taking three, four or five years for a tax-delinquent property to be sold, the process could take a much shorter time once the taxes are delinquent for a given period of time, such as one year. So long as property owners are given an adequate period of time to pay before a sale occurs, a post-sale right of redemption, like a second proceeding, is unnecessary.¹¹⁹

116. *Tax Liens*, *supra* note 107, at 793.

117. *Tax Liens*, *supra* note 107, at 791.

118. Not only does a new proceeding potentially jeopardize the constitutionality of the sale, the dual sale regime lacks policy justification. So long as proper notice is given and reasonable time is allowed for delinquent owners to pay the due taxes, a second proceeding is unnecessary. See Frank S. Alexander, *Renewing Public Assets for Community Development* 13 (2000), available at <http://www.lisc.org/content/publications/detail/798/>.

119. *Id.*

Lastly, having notified all parties with legally protected interests and having allowed for a sufficient period of time for the owner to make arrangements to pay the tax bill, when the proceeding does finally occur (within a year after the taxes have been delinquent for a year), it should be in front of a judge. This way the judge can inspect and approve the adequacy of the notice given and can issue a final order regarding the title to the property.¹²⁰ This will greatly increase the availability of title insurance for tax-foreclosed properties.

Such features would greatly strengthen land banks' ability to acquire the swaths of tax-delinquent and abandoned properties plaguing Pennsylvania's cities and towns. Further, such features would render the title to the properties acquired marketable, which would help the land banks to transform properties from delinquency to public assets, and to do so in a timely manner.

VI. CONCLUSION

The Land Bank Act, though still in development, demonstrates strong potential for municipalities to create land banks to address one of their most trenchant problems. Once the legislature reconciles the bills put forth by the House and the Senate, its next task should be to take a long, hard look at the tax foreclosure regimes in place in the Commonwealth. These regimes must be replaced by one that is more modern, precise, and effective. Though the legislature's efforts on the incipient Land Bank Act should be encouraged, even applauded, rest on such laurels cannot be, if the Land Bank Act is to live to its full potential.

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120. *Id.* at 14.

